

TONBRIDGE & MALLING BOROUGH COUNCIL

COMMUNITY AND ENVIRONMENT SCRUTINY SELECT COMMITTEE

08 February 2023

**Report of the Director of Street Scene, Leisure & Technical Services and Cabinet
Member for Technical & Waste Services**

Part 1- Public

Matters for Recommendation to Cabinet

1 HOUSEHOLD RECYCLING AND WASTE SERVICE

Summary

The report outlines opportunities to maintain and improve service provision in relation to the Council's Waste Services Collection Contract, which is provided in Partnership with Tunbridge Wells Borough Council, that will be reported to Cabinet on the 14 February 2023. The report advises on a proposed extension to previously agreed support for a further 5 month period in relation to the recent and ongoing impacts of HGV market conditions and support for a proposed Phase 2 of re-rounding. Members of this Scrutiny Select Committee are invited to review the content of the report in advance of the Cabinet meeting and make any recommendations or observations to Cabinet.

1.1 Introduction and Background

1.1.1 In 2018 the Council jointly awarded a contract with Tunbridge Wells Borough Council (TWBC) to Urbaser Ltd and Urbaser SA for street cleansing and the collection of household waste and recycling. The contract commenced in March 2019 with an 8-year term.

1.1.2 This report, which is due to be presented to the Cabinet on 14 February, considers two areas in relation to the operation of the contract. The first relates to the time limited provision of limited financial assistance previously agreed by the councils for the period May to October 2022 (inclusive). The second sets out a proposal from Urbaser to undertake changes to the current food, recycling and refuse collection rounds and the introduction of a new fleet of collection vehicles during 2023.

1.1.3 Members of this Scrutiny Select Committee are invited to review the content of the report in advance of the Cabinet meeting and make any recommendations or observations to Cabinet.

1.2 Provision of Limited Financial Assistance By Way of Additional Payments

- 1.2.1 In response to the HGV driver shortage, Urbaser proposed the introduction of an enhanced pay rate for its HGV drivers working in the joint contract to reflect the pressures in the employment market. The aim of the enhanced pay rate was to improve the recruitment and retention of drivers, ensuring that sufficient drivers were available and aid the reinstatement of suspended garden waste service in early 2022.
- 1.2.2 A proposal was put forward for the additional unexpected staffing costs to be shared between the two councils and Urbaser. This proposal was approved under a Cabinet Member Decision Notice and a six-month agreement to make additional payments to provide limited financial assistance between May and October 2022 (inclusive) was put in place.
- 1.2.3 As a result, the recruitment and retention of drivers has improved. There is now a higher proportion of directly employed drivers and a reduced reliance on temporary agency staff. The same is also the case for loaders and this has led to an increase in consistency of staff on collection rounds.
- 1.2.4 The pressures, however, continue to exist in the HGV driver market with wage settlement running ahead of inflation and market conditions have not improved. In response, Urbaser has asked for this support to continue for the remaining years of the contract, reviewed on an annual basis. The two councils acknowledge that pressures remain in the driver market and that the position since the first period of financial assistance (May to October 2022) were agreed has not significantly altered.
- 1.2.5 The annual contract sum is subject to a contractual annual indexation each April calculated using the RPI and DERV indices from the preceding October. The estimated indexation from 1 April 2023 is 16.3% and the councils' view is that this level of indexation takes into account the increased wage costs currently being experienced and that this, together with future annual indexation, removes any need to continue to provide this support beyond April 2023. In recognition of the ongoing exceptional circumstances during 2022/23 the two councils are minded to agree to an extension of the previously approved additional payments but only until 31 March 2023, conditional upon the contractor continuing to provide agreed and satisfactory evidence. The value of these monthly payments for TMBC is a maximum of £15,356 giving an additional cost from November 2022 to March 2023 (inclusive) of £76,780. As with the initial supplemental payment, this cost can be funded from the Budget Stabilisation Reserve to protect the garden waste income stream. The Revised Estimates for 2022/23 being considered by Cabinet on 14 February have been updated accordingly.
- 1.2.6 The councils have received confidential and privileged legal advice and have concluded that the proposed limited extension of financial support by way of these additional payments, is permitted under the Public Contracts Regulations 2015.

The payments are made in order to address unexpected additional costs to Urbaser caused by unexpected changes in market conditions and are only paid upon satisfactory evidence of those costs being provided to the councils.

- 1.2.7 The councils will publish an appropriate procurement notice (a Voluntary Ex-Ante Transparency Notice - a VEAT Notice) in the Official Journal of the European Union and the Find a Tender Service. Any agreement for the proposed further payments will not be entered in to until the expiry of period and absence of a challenge.

1.3 Re-rounding and Re-fleeting

- 1.3.1 Members will be aware that Urbaser has already reviewed and implemented the re-rounding of the Garden Waste Service in November 2022 (Phase 1). This was undertaken to re-balance the number of properties per round to reflect the changes in subscription numbers and new housing developments. The changes also allowed for the creation of dedicated collections crews to be based at the Tonbridge and Tunbridge Wells depots and serve the respective council areas. The crews now have an improved familiarity with the area improving service provision for residents.
- 1.3.2 Apart from the recent suspension of the garden waste service due to the implications of the adverse weather in December and the usual catch-up arrangements following the Christmas and New Year period, the introduction of the new rounds has gone to plan. The full benefits are expected to be seen during the main growing season.
- 1.3.3 Urbaser has now approached the two councils with a request to consider the implementation of a second phase of re-rounding that will involve changes to food, recycling and refuse collections. This Phase 2 also contains a proposal to replace the existing vehicle fleet with brand new vehicles of different configuration to fully optimise the efficiencies from re-rounding.
- 1.3.4 Currently, although on recycling week, separate vehicles are deployed to collect food waste, some food waste is collected on the same vehicles as the refuse. The proposed new fleet configuration will introduce an entirely separate food waste collection vehicles to service all properties that currently have a food waste collection. There would then be dedicated vehicles for both recycling and refuse collections. All of these materials will still be collected on the same day, but residents may see a change in their collection day and/or week of collection. If the proposal is approved, it would be implemented in Tonbridge & Malling in July 2023 following a communication campaign to inform residents of the specific changes to their collections.
- 1.3.5 Combining the rebalancing of the collection rounds with the vehicle re-fleeting will enable the optimisation of the collection service, taking into account actual and projected property growth, the changes in waste composition, volume and weight

from changing habits and the expected new legislation and guidance, including the forthcoming change requiring the collection of food waste from all properties.

- 1.3.6 The re-rounding and re-fleeting will enable a more efficient use of resources to meet the changing demands on the service, reducing travel distances and vehicle down time and improving the stability of the service.
- 1.3.7 To realise the maximum efficiencies from the re-rounding and re-fleeting will require the early lease termination of a number of the current vehicles. Urbaser has requested that the two councils assist with the implementation costs of the Phase 2 proposals and is seeking a contribution towards the early lease termination costs associated with a number of the existing fleet. The total cost of termination will be in the region of £775,000 and following discussions with Urbaser, the contribution that has been sought from the councils is set at a maximum of £150k per council. Any agreed payment would be made in the 2023/24 financial year, and the draft budget for 2023/24 being considered by Cabinet at its meeting on 14 February has been updated accordingly. As this is a one-off, designed to stabilise the waste contract and service delivery, it will be proposed to Cabinet that the additional cost is also funded from the Budget Stabilisation reserve.
- 1.3.8 Urbaser is proposing to lease circa 44 new vehicles, subject to finalising the requirements of the new rounds, and has requested our consent for the lease to be 8 years. This is the accepted industry norm for the lifecycle of a new vehicle, but this approach will result in the vehicle leases expiring beyond the end of the existing service contract. Entering into a lease of this length will result in lower monthly vehicle costs to Urbaser to offset against the cost of implementing the Phase 2 changes. This proposal will also contribute to long-term cost certainty (to the benefit of both councils and their populations) by securing a fleet of vehicles for use for 4 years from April 2027 by the next service provider(s) of their recycling and waste collection service at a known monthly cost. This benefit would also be achieved if the service was brought in-house by one, or both, of the councils, allowing a transition period with the key assets in place and not being exposed to the need to compete with established service providers for new vehicles in a congested market during the start-up period.
- 1.3.9 Planning for the next vehicle change in 2031 will also allow the electric vehicle market to have matured further and give the councils time to investigate and implement the enhancements necessary for the associated power network infrastructure.
- 1.3.10 The engines of the new fleet will meet the most recent Euro VI emissions standards, and, unlike the existing fleet, they will be capable of running on the biofuel HVO (hydrotreated vegetable oil) the use of which can significantly reduce the carbon dioxide emissions in comparison to diesel. The option of using HVO can be considered in 2027. In the meantime, the re-rounding is expected to

reduce vehicle mileage and emissions and other opportunities to reduce emissions, such as the use of electric bin lifts on the vehicles are being explored.

- 1.3.11 The 8-year lease length will require the councils to enter into an appropriate contract variation to provide a binding commitment that the vehicle lease(s) will be transferred either to the council(s) or to the new service provider(s) from April 2027. The two councils will also need to enter in to binding agreement to confirm which vehicles each council will take responsibility for from April 2027.
- 1.3.12 The councils have received confidential privileged legal advice and have concluded that the above proposal is permitted under the Public Contracts Regulations 2015.
- 1.3.13 The councils consider that the proposal does not amount to a substantial modification of the contract. It does not alter the scope or nature of the contract but brings about efficiencies and service improvements to the benefit of the councils and the populations they serve.
- 1.3.14 The proposed contribution to the vehicle termination costs does not alter the economic balance of the contract in favour of the incumbent. The changes will benefit the councils during the remainder of the contract with improved performance and a response to new legislation. The longer-term vehicle lease agreements will also be beneficial to the Council when the current contract expires as part of any option to provide the service in house or re-procure as a partnership or individually.
- 1.3.15 The re-fleeting and re-rounding proposals do not fundamentally change the character of the service, nor the contract originally procured, retaining the collection of the same material streams as set out in the contract specification.
- 1.3.16 As above, and as part of their commitments to transparency, the councils will publish an appropriate procurement notice (a Voluntary Ex-Ante Transparency Notice - a VEAT Notice) in the Official Journal of the European Union and the Find a Tender Service

1.4 Summary

- 1.4.1 The recommendation to Cabinet will be to accept both aspects of the proposal detailed above. This will meet both objectives of ensuring the retention of necessary staff in light of continuing difficulties in the HGV driver market and bringing about long-term cost certainty and efficiencies as detailed above.

1.5 Legal Implications

- 1.5.1 The councils have received confidential privileged legal advice and have concluded that the above proposals are permitted under the Public Contracts Regulations 2015.

- 1.5.2 The councils will publish an appropriate procurement notice (a Voluntary Ex-Ante Transparency Notice - a VEAT Notice) in the Official Journal of the European Union and the Find a Tender Service in respect to all proposals above. Any agreement for the proposed further payments will not be entered in to until the expiry of period and absence of a challenge.

1.6 Financial and Value for Money Considerations

- 1.6.1 The Council's draft Estimates for 2022/23 (revised) and 2023/24 being considered by Cabinet on 14 February have been updated to reflect these recommendations.

1.7 Risk Assessment

- 1.7.1 Rejecting the proposal for additional payments would risk staff not being retained until April 2023 (when increased staffing costs will be reflected by indexation in the contract). This would present an unacceptable risk of service(s) having to be cut or suspended (as happened previously with the Garden Waste service) and is likely to require the provision of higher levels of support to re-recruit and retain staff.
- 1.7.2 Rejecting the proposal relating to vehicle leases would mean that the councils will not secure the benefits of a new fleet of vehicles with the long-term cost certainty or the beneficial effect on the next contract, however this is provided, that this will bring.
- 1.7.3 The proposal for the councils to take on responsibility for the new fleet of vehicles from April 2027 presents an element of risk. At the time of considering this proposal the configurations of the new vehicles are industry standard and the expectation is that they will meet the needs of the service for the long-term foreseeable future.
- 1.7.4 The vehicles will be maintained by the supplier under the lease contract, and it is in all parties' interests to ensure that they are suitably maintained. The councils will carry out regular monitoring of maintenance records during the remainder of the current service contract. The current contractor has committed to an annual review of each vehicles' condition; provision of annual service & maintenance records; and an annual review of mileage. In addition, each vehicle will be subject to a full condition survey in the run up to the next service procurement exercise and at the handover of the vehicles in March 2027.
- 1.7.5 From March 2027, the liabilities for the lease costs and associated maintenance costs will be borne by the new contractor should the Council decide to go out to procurement for the services by a third party for 2027 onwards. Should the Council decide to bring the services in-house, the Council would bear this liability. In both cases these costs would have to be borne by either party anyway as part of future service provision.

1.7.6 There are operational risks associated with the effective implementation of the new collection rounds. A project team is in place with membership from Urbaser, Tunbridge Wells BC and this Council. A separate TMBC team will be re-established, involving representatives from the Communications and IT teams together with the operational representatives.

1.8 Equality Impact Assessment

1.8.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.9 Policy Considerations

1.9.1 Climate Change, Community and Procurement

1.10 Recommendations

1.10.1 Please find below recommendations due to be taken to Cabinet on 14 February. Members of the Community & Environment Scrutiny Select Committee are invited to offer any comments on the report above and recommendations below.

- 1) that Council gives authority to the Director of Street Scene, Leisure and Technical Services to extend, for the period November 2022 to March 2023, the provision of limited financial assistance to Urbaser Ltd and Urbaser SA in respect of the contract originally procured and that the value of this (£77,000) be reflected in the Revised Estimates for 2022/23 and funded from the Budget Stabilisation Reserve;
- 2) that Council approves a one-off contribution to Urbaser Ltd of up to £150,000 towards the costs of terminating a number of existing collection vehicle leases to facilitate the provision of a new fleet of collection vehicles in 2023/24 and that the value of this be reflected in the Estimates for 2023/24 and be funded from the Budget Stabilisation Reserve;
- 3) that Council gives authority to the Director of Street Scene, Leisure and Technical Services in consultation with Director of Finance and Transformation and Director of Central Services to complete all necessary negotiations, legal processes and legal documentation to enter into an agreement with Urbaser Ltd to allow for the transfer of the new vehicle lease(s) to the Council in conjunction with Tunbridge Wells Borough Council or to the organisation(s) contracted to provide the two councils' household waste collection service on the expiry of the current joint recycling and waste collection and street cleansing contract;

- 4) that Council gives authority to the Director of Street Scene, Leisure and Technical Services in consultation with the Director of Finance and Transformation and the Director of Central Services to complete all necessary negotiations, legal processes and legal documentation and enter into an agreement with Tunbridge Wells Borough Council to share the liability for the new vehicle fleet from the end of the current joint recycling and waste collection and street cleansing contract; and
- 5) that Council notes that a Voluntary Ex-Ante Transparency Notice will be published containing details of the proposed changes set out in recommendation 1,2 and 3 to cover the items highlighted above.

The Director of Street Scene, Leisure & Technical Services confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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Nil

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